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8 TRACI DAVIS

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TRINA OLSEN,

Plaintiff,

vs.

WASHOE COUNTY SCHOOL DISTRICT, a
political subdivision of the State of Nevada;
Washoe County School District Superintendent
TRACI DAVIS; and DOES 1 through 10
inclusive,

Defendants.

CASE NO. 3:19-cv-00665-MMD-WGC

DEFENDANT TRACI DAVIS'S
ANSWER TO AMENDED VERIFIED
COMPLAINT

COMES NOW Defendant, TRACI DAVIS, by and through her attorneys of record,
Thorndal Armstrong Delk Balkenbush & Eisinger, and in answer to Plaintiff's Verified
Amended Complaint, hereby admits, denies, and alleges as follows:

FIRST DEFENSE

Arbitration Exemption

1. Defendant denies the allegations contained in Paragraph 1 of Plaintiff's Verified
Amended Complaint.

Jurisdiction and Venue

2. Defendant denies the allegations contained in Paragraph 2 of Plaintiff's Verified
Amended Complaint.

4. Defendant is without sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 4 of Plaintiff's Verified Amended Complaint and, upon such basis, denies said allegations.

6. Defendant admits the allegations contained in Paragraph 6 of Plaintiff's Verified Amended Complaint.

8. Paragraph 8 of the Plaintiff's Verified Amended Complaint calls for a legal conclusion, not facts, which cannot be admitted or denied by Defendant. To the extent Paragraph 8 is deemed to contain factual allegations, Defendant denies said allegations.

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Allegations of Fact

10. Defendant is without sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 10 of Plaintiff's Verified Amended Complaint and, upon such basis, denies said allegations.

11. Defendant is without sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 11 of Plaintiff's Verified Amended Complaint and, upon such basis, denies said allegations.

12. Defendant is without sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 12 of Plaintiff's Verified Amended Complaint and, upon such basis, denies said allegations.

13. Defendant is without sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 13 of Plaintiff's Verified Amended Complaint and, upon such basis, denies said allegations.

14. Defendant is without sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 14 of Plaintiff's Verified Amended Complaint and, upon such basis, denies said allegations.

15. Defendant is without sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 15 of Plaintiff's Verified Amended Complaint and, upon such basis, denies said allegations.

16. Defendant is without sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 16 of Plaintiff's Verified Amended Complaint and, upon such basis, denies said allegations.

1 17. Defendant is without sufficient knowledge or information with which to form a
2 belief as to the truth of the allegations contained in Paragraph 17 of Plaintiff's Verified Amended
3 Complaint and, upon such basis, denies said allegations.

4 18. Defendant is without sufficient knowledge or information with which to form a
5 belief as to the truth of the allegations contained in Paragraph 18 of Plaintiff's Verified Amended
6 Complaint and, upon such basis, denies said allegations.

7 19. Defendant is without sufficient knowledge or information with which to form a
8 belief as to the truth of the allegations contained in Paragraph 19 of Plaintiff's Verified Amended
9 Complaint and, upon such basis, denies said allegations.

10 20. Defendant denies the allegations contained in Paragraph 20 of Plaintiff's Verified
11 Amended Complaint.

12 21. Defendant is without sufficient knowledge or information with which to form a
13 belief as to the truth of the allegations contained in Paragraph 21 of Plaintiff's Verified Amended
14 Complaint and, upon such basis, denies said allegations.

15 22. Defendant is without sufficient knowledge or information with which to form a
16 belief as to the truth of the allegations contained in Paragraph 22 of Plaintiff's Verified Amended
17 Complaint and, upon such basis, denies said allegations.

18 23. Defendant is without sufficient knowledge or information with which to form a
19 belief as to the truth of the allegations contained in Paragraph 23 of Plaintiff's Verified Amended
20 Complaint and, upon such basis, denies said allegations.

21 24. Defendant denies the allegations contained in Paragraph 24 of Plaintiff's Verified
22 Amended Complaint.

1 25. Defendant is without sufficient knowledge or information with which to form a
2 belief as to the truth of the allegations contained in Paragraphs 25, 25a, 25b, 25c, and 25d of
3 Plaintiff's Verified Amended Complaint and, upon such basis, denies said allegations.

4 26. Paragraph 26 of Plaintiff's Verified Amended Complaint contains citations to a
5 decision and award set forth as Exhibit 4 to the Verified Amended Complaint. Exhibit 4 speaks
6 for itself.

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8 27. Defendant denies the allegations contained in Paragraph 27 of Plaintiff's Verified
9 Amended Complaint.

10 28. Defendant denies the allegations contained in Paragraph 28 of Plaintiff's Verified
11 Amended Complaint.

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13 29. Defendant denies the allegations contained in Paragraph 29 of Plaintiff's Verified
14 Amended Complaint.

15 30. Defendant denies the allegations contained in Paragraph 30 of Plaintiff's Verified
16 Amended Complaint.

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18 **CLAIMS FOR RELIEF**

19 **42 U.S.C. 1983 – VIOLATION OF DUE PROCESS**

20 **(PROTECTED PROPERTY INTEREST)**

21 **(Against Defendant Davis)**

22 31. In answer to Paragraph 31 of Plaintiff's Verified Amended Complaint, Defendant
23 repeats and realleges each and every answer to Paragraphs 1 through 30 as though fully set forth
24 herein at length.

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26 32. Defendant denies the allegations contained in Paragraph 32 of Plaintiff's Verified
27 Amended Complaint.

1 33. Defendant denies the allegations contained in Paragraph 33 of Plaintiff's Verified
2 Amended Complaint.

3 34. Defendant denies the allegations contained in Paragraph 34 of Plaintiff's Verified
4 Amended Complaint.

5 35. Defendant denies the allegations contained in Paragraph 35 of Plaintiff's Verified
6 Amended Complaint.

7 36. Defendant denies the allegations contained in Paragraph 36 of Plaintiff's Verified
8 Amended Complaint.

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11 **42 U.S.C. 1983 – MONELL CLAIM**

12 **(Against WCSD)**

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14 37. In answer to Paragraph 37 of Plaintiff's Verified Amended Complaint, Defendant
15 repeats and realleges each and every answer to Paragraphs 1 through 36 as though fully set forth
16 herein at length.

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18 38. Defendant denies the allegations contained in Paragraph 38 of Plaintiff's Verified
19 Amended Complaint.

20 39. Defendant denies the allegations contained in Paragraph 39 of Plaintiff's Verified
21 Amended Complaint.

22 40. Defendant denies the allegations contained in Paragraph 40 of Plaintiff's Verified
23 Amended Complaint.

24 41. Defendant denies the allegations contained in Paragraph 41 of Plaintiff's Verified
25 Amended Complaint.

26 42. Defendant denies the allegations contained in Paragraph 42 of Plaintiff's Verified
27 Amended Complaint.
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1 43. Defendant denies the allegations contained in Paragraph 43 of Plaintiff's Verified
2 Amended Complaint.

3 44. Defendant denies the allegations contained in Paragraph 44 of Plaintiff's Verified
4 Amended Complaint.

5 **VIOLATION OF DUE PROCESS – NEVADA CONSTITUTION**

6 **(Against All Defendants)**

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8 45. In answer to Paragraph 45 of Plaintiff's Verified Amended Complaint, Defendant
9 repeats and realleges each and every answer to Paragraphs 1 through 44 as though fully set forth
10 herein at length.

11 46. Paragraph 46 of the Plaintiff's Verified Amended Complaint calls for a legal
12 conclusion, not facts, which cannot be admitted or denied by Defendant. To the extent
13 Paragraph 46 is deemed to contain factual allegations, Defendant denies said allegations.
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15 47. Defendant denies the allegations contained in Paragraph 47 of Plaintiff's Verified
16 Amended Complaint.

17 48. Defendant denies the allegations contained in Paragraph 48 of Plaintiff's Verified
18 Amended Complaint.
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20 **TORTIOUS DISCHARGE IN VIOLATION OF PUBLIC POLICY**

21 **(Against All Defendants)**

22 49. In answer to Paragraph 49 of Plaintiff's Verified Amended Complaint, Defendant
23 repeats and realleges each and every answer to Paragraphs 1 through 48 as though fully set forth
24 herein at length.

25 50. Defendant is without sufficient knowledge or information with which to form a
26 belief as to the truth of the allegations contained in Paragraph 50 of Plaintiff's Verified Amended
27 Complaint and, upon such basis, denies said allegations.
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SIXTH DEFENSE

Plaintiff is constrained from invoking equitable jurisdiction and an equitable remedy because Plaintiff has not come before this Court with clean hands.

SEVENTH DEFENSE

Upon information and belief, Plaintiff has failed to mitigate her damages.

EIGHTH DEFENSE

Plaintiff is estopped from asserting any cause of action whatever against Defendant.

NINTH DEFENSE

Plaintiff, by her acts and conduct, has waived and abandoned any and all claims as alleged herein against Defendant.

TENTH DEFENSE

An award of punitive damages against Defendant would be violative of the Fifth Amendment of the United States Constitution in that there is no assurance against multiple, unrestrained punishment in the form of punitive damages. Such an award of punitive damages would be violative of the double jeopardy provisions of the Nevada Constitution, Art. I, §8.

ELEVENTH DEFENSE

An award of punitive damages against Defendant would be violative of the due process clause of the United States Constitution, the Fourteenth Amendment, §1, and violative of the due process clause of the Nevada Constitution, Art. I, §8.

TWELFTH DEFENSE

An award of punitive damages against Defendant would constitute an undue burden upon interstate commerce and violate the interstate commerce clause of the United States Constitution, Art. I, §8.

1 **THIRTEENTH DEFENSE**

2 An award of punitive damages against Defendant would constitute an excessive fine
3 violative of the Nevada Constitution, Art. I, §7.

4 **FOURTEENTH DEFENSE**

5 An award of punitive damages against Defendant should be barred since Plaintiff cannot
6 establish that Defendant had an "evil mind" and "conducted herself in an aggravated and
7 outrageous manner".

8 **FIFTEENTH DEFENSE**

9 The burden of proof on punitive damages should be by clear and convincing evidence.

10 **SIXTEENTH DEFENSE**

11 Plaintiff's claims are barred by the doctrine of qualified immunity.

12 **SEVENTEENTH DEFENSE**

13 Plaintiff is barred from recovering damages against Defendant by her failure to exhaust
14 administrative remedies.

15 **EIGHTEENTH DEFENSE**

16 Defendant's alleged actions and omissions were taken with due care in the execution of
17 statutes and regulations and, therefore, Defendant is statutorily immune from suit.

18 **NINETEENTH DEFENSE**

19 Defendant's alleged actions and omissions occurred in the exercise or performance of
20 discretionary functions and duties and, therefore, Defendant is statutorily immune from suit.

21 **TWENTIETH DEFENSE**

22 Defendant's alleged conduct did not violate clearly established statutory or constitutional
23 rights of which a reasonable person would have known.

24 **TWENTY-FIRST DEFENSE**

25 Plaintiff's recovery of damages concerning Plaintiff's state tort claims are limited by the
26 provisions of Chapter 41 of the Nevada Revised Statutes.
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TWENTY-SECOND DEFENSE

On information and belief, Plaintiff failed to comply with the notice provisions of Chapter 41 of the Nevada Revised Statutes.

TWENTY-THIRD DEFENSE

Plaintiff's Amended Verified Complaint must be dismissed because Plaintiff did not, and does not, have a compensable property interest in the subject matter at issue.

TWENTY-FOURTH DEFENSE

Plaintiff's Amended Verified Complaint must be dismissed on the grounds that she lacks standing to sue under Article III of the United States Constitution and the Nevada Constitution.

TWENTY-FIFTH DEFENSE

No fundamental right is implicated by the conduct described in Plaintiff's Amended Verified Complaint.

TWENTY-SIXTH DEFENSE

Plaintiff is barred from recovering punitive damages in this case, under either state or federal claims for relief, by virtue of NRS 41.035 and 42 U.S.C. §1988.

TWENTY-SEVENTH DEFENSE

Pursuant to FRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's answer, and therefore Defendant reserves the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, Defendant prays:

1. That Plaintiff's Verified Amended Complaint be dismissed with prejudice and that she take nothing thereby;
2. That Defendant be awarded a reasonable attorney's fee and costs of suit; and

1 3. For such other and further relief as this Court deems just and proper.

2 DATED this 15th day of November, 2019.

3 THORNDAL ARMSTRONG
4 DELK BALKENBUSH & EISINGER

5 By: / s / ***Katherine F. Parks***

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13 Traci Davis
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and that on this date I caused the foregoing **DEFENDANT TRACI DAVIS'S ANSWER TO AMENDED VERIFIED COMPLAINT** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☒ United States District Court, District of Nevada CM/ ECF (Electronic Case Filing)

_____ personal delivery

_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

fully addressed as follows:

Luke Busby, Esq.
Luke Andrew Busby, Ltd.
316 California Avenue
Reno, Nevada 89509
Attorney for Plaintiff

Robert A. Dotson, Esq.
Justin C. Vance, Esq.
Dotson Law
5335 Reno Corporate Drive, Suite 100
Reno, Nevada 89511
Attorneys for Washoe County School District

DATED this 15th day of November, 2019.

/ s / **Sam Baker**

An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER